



Report to the Auburn City Council

Action Item

Agenda Item No.

12

City Manager's Approval

To: Mayor and City Council Members
From: Reg Murray, Senior Planner
Date: April 8, 2013
Subject: Ordinance Amendment – Reasonable Accommodation (File 301.3(aa))

The Issue

Should the City Council adopt an Ordinance for Reasonable Accommodation which adds Sections 159.430 through 159.434 to the Auburn Municipal Code?

Recommended Motion (Approval)

The Planning Commission held a public hearing to receive testimony and consider the Reasonable Accommodation Ordinance (**Exhibit A**) on March 5, 2013. The Planning Commission unanimously recommended that the City Council take the following actions:

- A. By Motion, adopt a Statutory Exemption prepared for the Reasonable Accommodation Ordinance as the appropriate level of environmental review in accordance with Section 15061 (b)(3) of the California Environmental Quality Act (CEQA) and Guidelines;
- B. By Motion, adopt the following Findings of Fact for approval of the Reasonable Accommodation Ordinance:
 1. The Ordinance implements State law;
 2. The Ordinance is consistent with the Auburn General Plan Housing Element;
 3. The Ordinance is the minimum necessary to protect the public interest, health, safety and general welfare.
- C. By Motion, introduce and hold a first reading, by title only, of the Reasonable Accommodation Ordinance adding Sections 159.430 through 159.434 to the Auburn Municipal Code.

Background

In 2001, the State passed Senate Bill 520 (SB 520), amending portions of the California Government Code (including §65583). The amendments included prohibiting discrimination due to a disability, and it also stipulated that the Housing Element of a jurisdiction's General Plan must include a program(s) necessary to adequately provide for the housing needs of all economic segments of the community, including persons with disabilities.

Reasonable Accommodation is one such program that promotes housing opportunities for, and removes constraints from, persons with disabilities. The reasonable accommodation process essentially serves as an (administrative) variance process whereby an applicant with disabilities can request an exception to a code standard, where the exception is necessary to address the applicant's disability. For example, a person in a wheelchair might need to construct an accessibility ramp to provide access to their home. Due to site limitations, the ramp might need to be located in a required setback (such as a front or side yard). Without reasonable accommodation, such a project could require approval of a variance, which is a discretionary entitlement requiring an application fee (±\$300) and approval by the Planning Commission. The reasonable accommodation process would establish a no-fee, administrative-level review by the City, thereby simplifying the entitlement process for applicants with disabilities (i.e. removing a constraint).

Adoption of the Reasonable Accommodation ordinance provides consistency with the existing requirements of the California Government Code (§65583). In addition, the State Department of Housing and Community Development (HCD) has established that, during the current housing element review cycle, jurisdictions are eligible to receive "streamline review processing" if those jurisdictions implement certain programs such as Reasonable Accommodation.

City staff are working on the update to Housing Element and recently submitted the public review draft to HCD to start their review process. Based on the commitment shown with the City's processing of the reasonable accommodation code amendment, the City's submittal qualified for the streamline review processing. As such, staff anticipates a response from HCD quicker than the standard processing timeframe.

The proposed Reasonable Accommodation ordinance (Exhibit A) conforms to current law and is consistent with multiple other jurisdictions surveyed by staff. The Planning Commission reviewed the proposed ordinance on March 5, 2013 and recommended that Council approve the ordinance with no changes.

The basic components of the reasonable accommodation ordinance include:

1. **Applicant** – The disabled person or their representative may submit an application.
2. **Application Requirements** – The proposed ordinance identifies the type of materials necessary for a complete application. It includes contact information, project plans, identification of the exception being requested, and a justification for the granting of the exception.
3. **No Fee** – No fee is required for a request for reasonable accommodation.
4. **Review** – Evaluation of the application will be conducted by the Community Development Director. The Director's decision will be provided to the applicant in writing within 45 days of the application and will include the applicant's appeal rights. The Director's decision can approve, approve with conditions, or deny the request. The Director may also approve an alternative that provides an equivalent level of use/enjoyment as compared to the request.

5. **Concurrent Review** – A request for reasonable accommodation can be filed together with other discretionary approvals. The request for reasonable accommodation will be processed concurrent with the discretionary entitlement and will be acted on by the discretionary authority (e.g. Planning Commission) instead of the Director.
6. **Appeals** – Appeal of the approving authority is permitted consistent with the City's established appeals process (AMC §162).

Environmental Determination

In accordance with Section 15061 (b)(3) of the California Environmental Quality Act (CEQA) and Guidelines, a project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is not possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The Auburn Community Development Department reviewed this project as required by CEQA and found it to be Statutorily Exempt from the provisions of CEQA per §15061(b)(3).

Alternatives Available; Implications of Alternatives

1. Adopt the Ordinance for Reasonable Accommodation as presented, or as amended by the City Council.
2. Do not adopt the Ordinance for Reasonable Accommodation and provide further direction to staff.

Fiscal Impact

Minimal fiscal impact associated with preparation of the draft ordinance by Community Development staff in consultation with the City Attorney.

Attachments:

1. Planning Commission Minutes (excerpted) – March 5, 2013

Exhibits:

- A. Reasonable Accommodation Ordinance

**MINUTES OF THE
AUBURN CITY PLANNING COMMISSION MEETING
March 5, 2013**

The regular session of the Auburn City Planning Commission was called to order on March 5, 2013, at 6:30 p.m. by Chair Spokely in the Council Chambers, 1225 Lincoln Way, Auburn, California.

COMMISSIONERS PRESENT: Luebkehan, Snyder, Spokely

COMMISSIONERS ABSENT: Vitas, Worthington

STAFF PRESENT: Will Wong, Community Development Director
Reg Murray, Senior Planner

I. CALL TO ORDER

II. APPROVAL OF MINUTES

None

III. PUBLIC COMMENT

None

IV. PUBLIC HEARING

- A. ORDINANCE AMENDMENT – REASONABLE ACCOMMODATION (File 301.3(aa)).** The City of Auburn proposes to amend the Auburn zoning ordinance by establishing provisions for Reasonable Accommodation. The ordinance for reasonable accommodation establishes a process for individuals with disabilities to make requests for relief from various land use, zoning, rules, policies, and practices to insure equal access to housing and places of business.

Planner Murray presented the Reasonable Accommodation Ordinance to the Planning Commission. Planner Murray noted that although the Ordinance Amendment was not a direct requirement in the City's currently Adopted Element, the Reasonable Accommodation Ordinance Amendment is an Ordinance that the Department of Housing and Community Development (HCD) wants to see Cities and Counties adopt and would expedite the City's current update of the Housing Element through HCD. The Reasonable Accommodation Ordinance also removes constraints to the provision of Housing.

The Reasonable Accommodation Ordinance provides an administrative variance procedure so that if someone needs to provide an accessibility feature that would normally require a variance, the Reasonable Accommodation Ordinance will provide a procedure to deviate from the City's Variance procedure.

Planner Murray discussed the Reasonable Accommodation application requirements with the Commission. Planner Murray noted that there is no fee for the application.

Planner Murray noted the draft Reasonable Accommodation Ordinance is very consistent with a number of other jurisdictions.

Chairman Spokely asked about the concurrent review of other entitlements. Would the fee been likewise waived with other entitlements?

Planner Murray discussed the concurrent review requirements of the Reasonable Accommodation Ordinance.

Chairman Spokely asked how the ordinance would apply to the Historic Districts?

Planner Murray noted that the Historic Design Review Commission already authorized staff to approve signs and accessibility upgrades within the Historic Districts.

Planner Murray noted that the Reasonable Accommodation Ordinance allows for an administrative review and approval in lieu of a discretionary review by the Planning Commission.

Chairman Spokely asked if this is a State requirement?

Planner Murray replied that the Reasonable Accommodation Ordinance removes constraints to persons with disabilities which is a state goal.

Chairman Spokely opened the public hearing.

Mike Mapes resident of Auburn and staff attorney of Legal Services of Northern California addressed the Commission. Mr. Mapes noted that many of his clients have accessibility needs and appreciates the City undertaking an ordinance to remove barriers to persons with disabilities.

Chairman Spokely asked how other jurisdictions are implementing Reasonable Accommodation Ordinances?

Mr. Mapes replied that generally speaking, any accessibility requirements that did not comply with the local zoning ordinance would be covered under a Reasonable Accommodation Ordinance in lieu of a Variance.

Chairman Spokely closed the public hearing.

Commissioner Luebke **MOVED** to recommend approval of the Reasonable Accommodation Ordinance as presented.

Commissioner Willick **SECONDED** the motion.

AYES:	Luebkehan, Willick, & Spokely
NOES:	None
ABSTAIN:	None
ABSENT:	Vitas, Worthington

The motion was **APPROVED**.

B. ORDINANCE AMENDMENT - EMERGENCY SHELTERS, TRANSITIONAL HOUSING, AND SUPPORTIVE HOUSING (File 301.3(bb)).

The City of Auburn proposes to amend the Auburn Municipal Code to allow Emergency Shelters in the Industrial (M-2) zone district and Supportive and Transitional Housing in the Medium Density Multiple-family Residential zone district (R-3).

Planner Murray presented the Emergency Shelters, Transitional and Supportive Housing Ordinance and explained that the ordinance fulfills obligations made with the last Housing Element and met SB 2 as required by the State.

In compliance with SB 2 the ordinance permits by right, the location of Emergency Shelters, Transitional and Supportive Housing in the Industrial (M-2) Zone. Planner Murray noted that the Government Code allows standards to be imposed and discussed the standards.

Planner Murray also noted that the Ordinance permitted Supportive and Transitional Housing in the Medium Density Multiple-family Residential Zone District (R-3).

Planner Murray noted that the Emergency Shelters Ordinance, in compliance with State Law, is required to identify at least one zone that permits Emergency Shelters by right. The Planning Commission can recommend which zone Emergency Shelters should go but cannot preclude them all together. Also, if there are standards such as parking that the Commission would like to modify, then that would be under the discretion of the Planning Commission.

Planner Murray discussed the various sections of the ordinance.

Planner Murray noted that there are different provisions for permanent facilities and temporary facilities.

Commissioner Luebkehan asked if there are current facilities in the residential zone?

Planner Murray noted that the permanent facilities would be permitted in the Industrial Zone and temporary facilities would not have a limitation and would be

ORDINANCE NO. 13 - _____

AN ORDINANCE OF THE CITY OF AUBURN ADDING
SECTIONS 159.430 THROUGH 159.434 (REASONABLE ACCOMMODATION)
TO THE AUBURN MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF AUBURN HEREBY FINDS AS FOLLOWS:

- A. Whereas the City seeks to comply with the provisions of the Federal Fair Housing Act and the California Fair Employment and Housing Act to provide disabled persons reasonable accommodation as necessary to ensure equal access to dwellings and/or places of business; and,
- B. Whereas California Government Code Section 65583(c)(3) requires that the Housing Element of a General Plan include provisions which remove governmental constraints for persons with disabilities; and
- C. Whereas the Housing Element of the Auburn General Plan identifies implementation programs to promote equal housing opportunities for all persons; and,
- D. Whereas the Zoning Ordinance of the Auburn Municipal Code regulates the existing standards of the City's development code.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY ORDAIN:

Section One: Chapter 159 of Title XV of the City of Auburn Municipal Code is hereby amended to add Sections 159.430 through 159.434 (Reasonable Accommodation) to read as follows:

REASONABLE ACCOMMODATION

159.430 PURPOSE.

In accordance with federal and state law, it is the policy of the city to provide disabled persons reasonable accommodations as necessary to ensure equal access to their dwelling or place of business. The purpose of this section is to provide a clear and defined process for disabled persons to make reasonable accommodation requests from existing standards in the city's development code.

159.431 REQUESTING REASONABLE ACCOMMODATION.

- (A) A disabled person or his/her representative may request reasonable accommodation relating to the city's various land use, zoning, rules, policies, practices, or procedures.

- (B) A reasonable accommodation may only be approved for the benefit of one or more individuals with a disability.
- (C) An application for a reasonable accommodation from a land use or zoning regulation, policy, or practice shall be made on a form provided by the department.
- (D) If an individual needs assistance in making the request for reasonable accommodation, or appealing a determination regarding reasonable accommodation, the Director will endeavor to provide the assistance necessary to ensure that the process is accessible to the applicant or representative.
- (E) If a project for which a reasonable accommodation request is made also requires another discretionary approval, then the applicant may file the reasonable accommodation request together with the application for the other discretionary approval. The processing procedures of the discretionary approval shall govern the joint processing of both the reasonable accommodation request and the discretionary permit.
- (F) No fee will be required for a request for reasonable accommodation. If the project requires another discretionary permit and environmental review, then the prescribed fee shall be paid for that discretionary permit and environmental review.

159.432 APPLICATION REQUIREMENTS

- (A) In addition to the materials required under other applicable provisions of this code, the applicant shall submit the following information with the application:
 - 1. The applicant's name, address and telephone number.
 - 2. If not the applicant, the identity of the disabled person(s), and the applicant's relation to the disabled person(s).
 - 3. Address of the property for which the request is being made.
 - 4. The current actual use of the property.
 - 5. The specific exception or modification to this development code, or other land use or development regulation, policy, or practice requested by the applicant.
 - 6. Identification and description of the disability which is the basis for the request for reasonable accommodation. The applicant shall include current written certification of the disability and a description of the disability's effects on the individual's medical, physical or mental limitations.
 - 7. Documentation as to why the requested exception is necessary to provide the reasonable accommodation. Where appropriate, the applicant shall include a summary of any alternatives to the reasonable accommodation.
 - 8. Copies of plans, pictures, memoranda, correspondence, or background information reasonably necessary for the review authority to reach a decision regarding the need for reasonable accommodation.
 - 9. Other supportive information deemed necessary by the city to facilitate proper consideration of the request so long as any request for additional information complies with state and federal law.

159.433 REVIEWING AUTHORITY

(A) *Director's Review.*

1. Requests for reasonable accommodation shall be reviewed by the Director, if no discretionary approval is sought other than the request for reasonable accommodation.
2. The Director shall issue a written decision on a request for reasonable accommodation within forty-five (45) days of the date of the application and may either approve, approve with conditions, or deny a request for reasonable accommodation in accordance with the findings set forth in Section 159.434.
3. All written determinations shall give notice of the right to appeal.
4. The Director may approve alternative reasonable accommodations which provide an equivalent level of use and enjoyment as determined by the Director or agreed upon by the applicant and the Director.
5. If necessary to reach a determination on the request for reasonable accommodation, the Director may request further information from the applicant consistent with fair housing laws, specifying in detail the information that is required. In the event that the Director requests additional information, the 45-day period to issue a decision shall not include the time between the date the Director requests additional information and the date on which the applicant responds to the request.

(B) *Concurrent Review.*

1. A request for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority reviewing the discretionary land use application.
2. The written determination on whether to grant or deny the request for reasonable accommodation shall be made by the reviewing authority in compliance with the applicable review procedure for the discretionary permit.
3. The written determination to grant or deny the request for reasonable accommodation shall be made in accordance with the findings set forth in Section 159.434.
4. All written determinations shall give notice of the right to appeal.
5. The reviewing authority may approve alternative reasonable accommodations which provide an equivalent level of use and enjoyment.

- (C) *Appeals.* Appeal of the determination of the approving authority on a request for reasonable accommodation shall be made in accordance with Chapter 162 of this Municipal Code.

159.434 REQUIRED FINDINGS

- (A) *Findings.* The written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval:
1. The requested accommodation is requested by or on behalf of one or more individuals with a disability protected by federal or state law.
 2. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy their dwelling or business.
 3. The requested accommodation will not impose an undue financial or administrative burden to the city.
 4. The requested accommodation will not fundamentally alter city zoning, development standards, policies, or procedures.
 5. The requested accommodation will not result in a fundamental alteration of a neighborhood's character
 6. The requested accommodation will not substantially undermine any express purpose of the General Plan or any applicable specific plan.
 7. The requested accommodation will not, under the specific facts of a case, result in a direct threat to the health and safety of other individuals or substantial physical damage to the property of others.

Section Two: This Ordinance shall take effect thirty days following its adoption as provided by Government Code Section 36937.

Section Three: The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

Section Four: If any part of this Ordinance is held to be invalid, such invalidity shall not affect any other provision which reasonably can be given effect without regard to the invalid provision and, to that end, the provisions of this Ordinance are hereby declared to be severable.

DATED: _____, 2013

Kevin Hanley, Mayor

ATTEST:

Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular session meeting of the City Council of the City of Auburn held on the _____ day of _____ 2013 by the following vote on roll call:

Ayes:

Noes:

Absent:

Stephanie L. Snyder, City Clerk

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